IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1376 OF 2004

Pushpadevi Roshanlal Jain .. Petitioner

Vs.

State of Maharashtra & Anr. .. Respondents

Anurag Jain for Petitioner.

Ms. Shilpa Gajare for the State.

CORAM: S.K. SHAH, J.

DATE : 13th June, 2006.

P.C.

Heard counsels on both sides. The Petition is taken up for final hearing with the consent of both the parties.

This writ petition is filed against the order passed by the learned Sessions Judge, Pune on 28/1/2004 setting aside the order of issue of process under section 138 of the Negotiable Instruments Act passed by the Magistrate.

The Respondent No. 2 has filed the complaint under section 138 of the Negotiable Instruments Act against the Petitioner and others. It has been specifically observed by the Apex Court in the case of SMS Pharmceuticals reported in 2005(4) Mh. L.J. 731 that there has to be specific allegations made in the complaint that at the time of the offence the accused were responsible for the conduct of business and affairs of the company so as to attract the provisions of section 141 of the Negotiable Instruments Act.

The learned counsel for the Petitioner states that there are no specific allegations made against the Petitioner who is the accused No. 2 in the complaint that she was in charge of the affairs of the company and was also responsible for the conduct of the business of the company. In the complaint there is no specific allegation as to which of the accused signed the cheque. The allegations in the complaint is to the effect that the accused No. 2 to 4 are the directors of accused No. 1 company and they are the customers of the company. It is further alleged that the accused had from time to time purchased the goods from the company and made part payment. Learned counsel for the petitioner submits that these allegations are very vague and there is no specific allegation against the petitioner that she was responsible for conduct of the business of the company.

Learned counsel for the respondent submits that there is allegation that all the accused were purchasing the goods from the company and therefore the petitioner cannot be discharged.

The allegation is vague. It cannot be said that there is specific allegation against the petitioner to show that she was in charge of the affairs of the company and that she was responsible for the conduct of the business of the company. To say that the goods were purchased from the company does not mean that she was in charge of the conduct of the business of the company and was also responsible therefor. As such the order passed by the learned Addl. Sessions Judge in Revision is illegal and the same needs to be set aside.

The impugned order passed by the learned Sessions Judge is liable to be set aside. The Petition is allowed. The complaint against the Petitioner/Original Accused No. 2 is hereby quashed. Ad interim relief stands vacated.

(S. K. SHAH, J)